

## REMARKS

Upon entry of this amendment, claims 31, 40-43 and 47-51 are pending. Support for amendments to claims 31 and 47 appears, *e.g.*, in the specification, including at least, *e.g.*, p. 6 ln 30 through p. 7 ln 13. Claims 31 and 47 were also amended to incorporate the language of claim 32 (which was canceled) in order to clarify the meaning of antimicrobial activity. Amendments to claims 40-43 correct improper dependency to a previously canceled claim, add clarity to what is being claimed, and correct antecedent basis to "a" dose.

No new matter is added by this response. Applicants reserve the right to prosecute amended, cancelled, and withdrawn claims or claims having breadth and scope similar to those as originally filed in this or another application having the same priority date as the present application.

### Examiner's rejections:

The Examiner made the following rejections in the Final Action:

1. Claims 31-43 and new claims 47-54 remain rejected under 35 U.S.C. §112 ¶1 for lack of enablement;
2. Claims 31-39, 47 and 52-53 remain rejected under 35 U.S.C. §102(b) by De Simone;
3. Claim 35 is objected to for containing an informality on line 2;
4. Claims 40-43 are objected to for depending from a cancelled claim; and
5. Claims 32 and 33 are rejected under 35 U.S.C. §112 ¶2 for failing to further limit claim 31.

Applicants first thank the Examiner for withdrawing the rejections listed in paragraph 3, parts (a) - (k), on pages 2-3 in the Final Action. The remaining rejections are addressed below.

### Rejections under 35 U.S.C. §112 ¶1 are overcome.

Claims 31-43 and previously added claims 47-54 were rejected under 35 U.S.C. §112 ¶1 for lack of enablement. Claims 32-39 and 52-54 have been canceled. Claims 31 and 47 have been amended. Claims 40-43 have been amended to depend from claim 31, and therefore incorporate its subject matter by reference. Applicants traverse this rejection as applied to the claims as amended.

On page 6, lines 2-5, the Examiner states:

The specification teaches that the 8-residue fragment of SP has antimicrobial activity but does not bind to a SP receptor since the fragment lacks the portion of the peptide that confers affinity to the receptor (page 12). The specification is enabled for this peptide fragment.

Accordingly, independent claims 31 and 47 have been amended to require a substance P peptide fragment that "comprises residues 1-8 and does not comprise residues 9-11" of SEQ ID NO:1 or 2, respectively. Applicants therefore respectfully request that this rejection be withdrawn.

Rejections under 35 U.S.C. §112 ¶2 are moot.

Claims 32 and 33 were rejected under 35 U.S.C. §112 ¶2 for failing to further limit claim 31. Claims 32-33 have been cancelled. Therefore this rejection is moot and should be withdrawn.

Rejections under 35 U.S.C. §102(b) are overcome.

Claims 31-39, 47 and 52-53 were rejected under 35 U.S.C. §102(b) for being anticipated by De Simone *et al.*, (J. Clin. Lab. Anal., 3: 345-349, 1989) ("De Simone") as set forth in a previous Office Action. The text of the previous rejection is included in the Final Action on pages 6-7. Claims 32-39 and 52-53 have been cancelled herein. Applicants traverse this rejection as applied to claims 31 and 47 as amended.

De Simone *et al.* report that "substance P" inhibits binding of blood lymphocytes and bound –bacterial lymphocytes. As is well known in the art, the term "substance P" without further clarification refers to the naturally-occurring undecapeptide (11-mer) shown in Fig. 1 of the application and described on page 5, lines 10-11, of the specification. As is discussed above, the claims have now been amended to require residues 1-8 of SEQ ID NO:1 or 2 lacking residues 9-11. De Simone does not teach the truncated SP fragment now required by claims 31 and 47. Therefore, the composition of the claims is structurally and functionally distinct from the composition described by De Simone.

The Examiner also states that recitation of an "antimicrobial composition" is being viewed as a limitation of intended use. Although this claim term appeared in originally-filed claim 1, it is not present in amended claims 31 and 47. To clarify the meaning of the term antimicrobial, these claims have been amended to incorporate the language of claim 32.

In view of the amendment to require an SP fragment that lacks residues 9-11 of the naturally-occurring substance P, Applicants respectfully request that this rejection be withdrawn.

Claim language objected to is corrected.

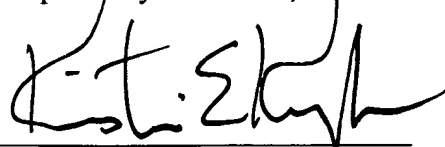
Claim 35 was objected to for containing an informality on line 2. Claim 35 is now cancelled. This objection is therefore moot and should be withdrawn.

Claims 40-43 were objected to for depending from a cancelled claim. Claim dependency has been corrected so that these claims now depend from claim 31. Applicants respectfully request this objection be withdrawn.

**CONCLUSION**

On the basis of the amendments and remarks, Applicants respectfully submit that the pending claims and specification are in condition for allowance. If there are any questions regarding these amendments and remarks, the Examiner is invited and encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,



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